

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>United States District Court</b>		District E.D.N.Y.	
Name (under which you were convicted): <b>JABBAR COLLINS</b>		Docket or Case No.: Ind. Nos. 2884/94; 8907/90	
Place of Confinement: Green Haven Correctional Facility, P.O. Box 4000, Stormville, New York 12582-0010		Prisoner No.: DIN: 95A-2646	
Petitioner (include the name under which you were convicted)  <b>JABBAR COLLINS</b>		Respondent (authorized person having custody of petitioner)  <b>ROBERT ERCOLE</b>	
The Attorney General of the State of New York			

*[Handwritten signature]*  
N.Y.

APR 03 2008  
BROOKLYN OFFICE

**IRIZARRY, J.**

**POLLAK M.J.**

**PETITION**

- (a) Name and location of court that entered the judgment of conviction you are challenging: Supreme Court of the State of New York, County of Kings
- (b) Criminal docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90
- (a) Date of the judgment of conviction (if you know): April 3, 1995
- (b) Date of sentencing: April 3, 1995
- Length of sentence: 33 1/3 years to life, plus 1 1/3 to 4 years for probation violation, to be served consecutively
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐ G
- Identify all crimes of which you were convicted and sentenced in this case: Murder in the second degree (two counts), attempted murder, robbery in the first degree, assault in the first degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, violation of sentence of probation previously imposed for attempted robbery in the third degree.
- (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) G
(2) Guilty G	(4) Insanity plea G
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐ G

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☒ G

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐ G

9. If you did appeal, answer the following:

(a) Name of court: Supreme Court of the State of New York, Appellate Division,  
Second Dept.

(b) Docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90

(c) Result: Denied

(d) Date of result (if you know): March 29, 1999

(e) Citation to the case (if you know): 259 A.D.2d 758

(f) Grounds raised: See attached addendum.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) Did you seek further review by a higher state court? Yes ☒ No ☐ G

If yes, answer the following:

(1) Name of court: Court of Appeals of New York

(2) Docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90

(3) Result: Leave to appeal denied.

(4) Date of result (if you know): August 17, 1999

(5) Citation to the case (if you know): 93 N.Y.2d 1016

(6) Grounds raised: Same as in Appellate Division  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒ G

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

**Addendum**  
**Question 9(f)**

Defendant's right to counsel, under the Sixth and Fourteenth Amendments to the United States Constitution, was violated when the police denied defendant's counsel access to a lineup; defendant's right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution was violated by comments made by the prosecutor while cross-examining the defendant; the People failed to prove defendant's guilt beyond a reasonable doubt; defendant's right to due process, under the Fifth and Fourteenth Amendments to the United States Constitution, was violated by the admission of evidence of a suggestive lineup; defendant's sentence was excessive.

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Supreme Court of the State of New York, County of Kings

(2) Docket or case number (if you know): Ind. Nos. 2884/90 and 8807/90

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: Criminal Procedure Law Sect. 440.10 Motion

(5) Grounds raised: The People violated their duties under People v. Rosario when they failed to disclose summaries of witness statements; the

defendant's right to counsel, under the Sixth and Fourteenth Amendments to the United States Constitution, was violated by his attorney's absence at a lineup; defendant's right to the effective assistance of counsel, under the Sixth and Fourteenth Amendments to the United States Constitution, was violated by trial counsel's failure to move to suppress lineup evidence on right to counsel grounds and by his failure to object to mugshot evidence.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒ Denied

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): June 16, 1997

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Supreme Court of the State of New York, County of Kings

(2) Docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90

(3) Date of filing (if you know): March 15, 2006

(4) Nature of the proceeding: Criminal Procedure Law Sect. 440.10 Motion

(5) Grounds raised: Defendant's rights to due process and a fair trial, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, were violated when the People knowingly presented false and misleading evidence and argument, and withheld Brady and Rosario material; Defendant's right to the effective assistance of counsel, under the Sixth and Fourteenth Amendments to the United States Constitution, was violated by his trial counsel's failure to present a third-party-culpability defense.

\_\_\_\_\_  
\_\_\_\_\_  
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): September 5, 2007

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
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\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

Defendant's rights to due process and a fair trial, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, were violated when the people knowingly presented false and misleading evidence and argument, and withheld Brady material.

**GROUND ONE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

See attached addendum.

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

**(c) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: The necessary facts were not known, despite Petitioner's due diligence.

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Criminal Procedure Law Sect. 440.10 Motion.

Name and location of the court where the motion or petition was filed: Supreme Court of the State of New York, County of Kings

Docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90

Date of the court's decision: September 5, 2007

Result (attach a copy of the court's opinion or order, if available): Denied  
See attached.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of the State of New York,  
Appellate Division, Second Department

Docket or case number (if you know): Ind. Nos. 2884/94 and 8907/90

Date of the court's decision: March 3, 2008

Result (attach a copy of the court's opinion or order, if available): Leave to appeal denied.  
See attached.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes G No G

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes G No G

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes G No G

(4) Did you appeal from the denial of your motion or petition?

Yes G No G

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes G No G

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_



(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

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**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

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(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes G No G

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes G No G

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes G No G

(4) Did you appeal from the denial of your motion or petition?

Yes G No G

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes G No G

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(c) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes G No G

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes G No G

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes G No G

(4) Did you appeal from the denial of your motion or petition?

Yes G No G

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes G No G

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
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\_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_
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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: \_\_\_\_\_

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- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: No
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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. \_\_\_\_\_

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Michael C. Harrison, 67 Wall Street, New York, New York 10005

(b) At arraignment and plea: Same

(c) At trial: Same

(d) At sentencing: Same

(e) On appeal: William L. Ostar, 350 Broadway, Suite 412, New York, New York 10013

(f) In any post-conviction proceeding: Pro se for first Criminal Procedure Law Sect. 440.10 motion; for second Criminal Procedure Law Sect. 440.10 motion:

Joel B. Rudin, 200 West 57th Street, Suite 900, New York, New York 10019  
(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_  
\_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

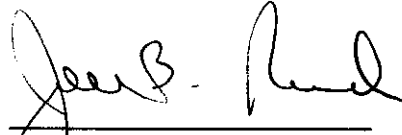
See attached addendum.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

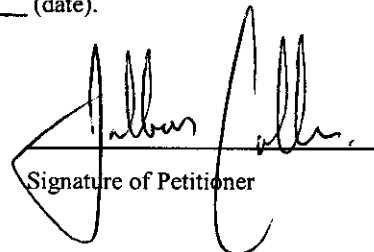
Therefore, petitioner asks that the Court grant the following relief: That the State of New York  
be ordered to retry Petitioner or else that Respondent Robert Ercole be  
ordered to release Petitioner from custody.

or any other relief to which petitioner may be entitled.

  
\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this  
Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_  
\_\_\_\_\_. (month, date, year).

Executed (signed) on March 27, 2008 (date).

  
\_\_\_\_\_  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing  
this petition. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_